

# Workers' Compensation Court of Appeals

*April through June 2005*

Case summaries published are  
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***Cantu v. Ameripride Linen and Apparel Service, 4/1/05***  
DOI: 2/00/03

Attorney Fees – Roraff  
Attorney Fees – Irwin  
Minnesota Statutes §176.081, subd. 1

Where the judge reasonably denied the employee's attorney's request for \$6,107 in hourly based attorney fees but, in awarding instead a flat fee of \$3,000, failed to apply the statutory formula to the medical and rehabilitation benefits awarded, the compensation judge's award of attorney fees was modified to \$4,412.39, to reflect calculation contemplating the awarded medical and rehabilitation benefits, pursuant to statutory guidelines.

Affirmed in part, and reversed and modified in part.

***Nadeau v. City of Maplewood, 4/1/05***  
DOI: 11/14/89

Permanent Partial Disability – Neck

Substantial evidence supported the compensation judge's decision that the employee's bulging cervical discs did not produce an impairment of function separate and distinct from the cervical stenosis for which the employee had already received permanent partial disability benefits.

Affirmed.

• Summaries of Decisions

***Groshong v. The Light Depot, et al*, 4/4/05**

**DOI: 10/18/97, 9/11/95, 8/21/95**

Vacation of Award – Substantial Change in Condition

Where there was no evidence of a significant change in diagnosis or any significant change in the employee's ability to work, the employee failed to establish good cause to vacate based on substantial change in her medical condition.

Petition to vacate denied.

***McFarland v. Dahl Trucking, Inc.*, 4/4/05**

**DOI: 7/19/03**

Temporary Total Disability  
Job Offer – Physical Suitability  
Minnesota Statutes §176.101, subd. 1(i)

Substantial evidence, including the well-founded opinion of the independent medical examiner (IME), supports the compensation judge's findings that the employee could work subject to physical work restrictions provided by the IME, and that the employee refused an offer of gainful employment the employee could do in his physical condition. The compensation judge, therefore, properly allowed discontinuance of temporary total disability benefits pursuant to Minnesota Statutes §176.101, subd. 1(i).

Affirmed.

***Traynor v. Citizen's Communications*, 4/4/05**

**DOI: 11/5/02**

Temporary Benefits  
Appeals – Scope of Review

Where, on appeal, the employee suggested that the issue before the compensation judge at the discontinuance hearing had been whether or not the employer and insurer had paid benefits under a mistake of fact, whereas the parties had expressly agreed at hearing that the issue was whether the insurer was entitled to discontinue benefits based on the employee's having reached maximum medical improvement, and where it was reasonable to conclude that the employee had reached maximum medical improvement under terms of the statute well prior to the date of the hearing, the compensation judge's decision permitting discontinuance of benefits was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

## • Summaries of Decisions

***Heitland, deceased by Heitland v. R.O. Drywall, 4/5/05***

**DOD: 10/11/01**

### Causation – Heart Condition

Substantial evidence in the form of a well-founded medical report supports the compensation judge's determination that the employee's work activity was not a substantial contributing cause of his death.

Affirmed.

***Jolitz v. Technical Erectors, Inc., 4/5/05***

**DOI: 9/30/99**

### Arising Out Of and In the Course Of

Where the employee had completed his work for the day and had decided to borrow a fire extinguisher from a neighboring business for the sole purpose of washing his personal truck, where the employee's injury in the process of pressurizing the fire extinguisher occurred on the neighboring premises and not in the performance of any request by the employer, the compensation judge's conclusion that the employee's injury did not arise out of and in the course of employment was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that entry onto the neighboring premises and use of the neighbor's equipment was not contrary to the employer's standard protocol and permission.

Affirmed.

***Moe v. North Country Hospital, 4/6/05***

**DOI: 12/6/99**

### Settlements – Interpretation

Given the language of the settlement agreement and the circumstances of the case, the compensation judge properly concluded that various medical expense claims did not relate to "chronic pain treatment" closed out by the settlement.

### Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence, including the opinion of the employer's own independent examiner, supported the compensation judge's decision that certain medical treatment was reasonable and necessary to cure or relieve the employee from the effects of her work injury.

Affirmed.

***Burcalow v. Tweeten Lutheran Health Care Center, 4/11/05***

**DOI: 7/10/99**

#### Vacation of Award – Substantial Change in Condition

Based upon a change in the employee's diagnosis due to the worsening of her reflex sympathetic dystrophy condition, a change in her ability to work, her increased level of permanent partial disability, the extensive medical treatment the employee has undergone and the causal relationship between the employee's current condition and her work injury, the employee has shown a substantial change in medical condition sufficient to justify vacating the award on stipulation.

Where there was medical evidence that the employee's right arm reflex sympathetic dystrophy (RSD) condition had spread to other extremities, the employee was not required to demonstrate that her other extremities had five of the eight requirements of RSD, listed in the permanent partial disability schedules, to demonstrate sufficient cause to vacate a stipulation for settlement on the basis of substantial change in condition.

Petition to vacate granted.

***Hendricks v. John Schuhwerck Trucking, 4/12/05***

**DOI: 7/31/02**

#### Causation

Where it was not unreasonable in light of the entire record as submitted, including the opinions and records of at least two medical experts, the compensation judge's conclusion that the employee's ongoing low back complaints were unrelated to his work-related motor vehicle accident as alleged was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

***Serra v. Hanna Mining Co./National Steel Pellet, 4/12/05\****

**DOI: 3/13/81**

#### Temporary Partial Disability

Where there was no evidence of any non-job-search factors that would have supported the judge's decision, the compensation judge erred, under the principles articulated in Marsolek v. Geo. A. Hormel & Co., in denying the employee's claim for temporary partial disability benefits at the temporary total disability rate for the period immediately following the employee's termination from his post-injury job, during which period the employee had conducted a reasonably diligent search for employment.

#### Earning Capacity – Actual Wages Presumption

Where the employee's employment in his post-injury job with a bank was terminated after 18 years and subsequently, after a reasonable job search, he found other work at a convenience store, where there was no evidence that higher paying work was available in the employee's job market, and

where the employee QRC testified that the employee's earnings at the convenience store properly demonstrated the employee's current earning capacity, the compensation judge's finding that the employee's post-injury wage at the bank, rather than his wage at the convenience store, accurately represented the employee's earning capacity was clearly erroneous and unsupported by substantial evidence, and the judge's decision to that effect was reversed.

Reversed.

***Caizzo v. McDonald's/T&K Restaurant Franchise Group*, 4/14/05**

**DOI: 5/2/03**

#### Arising Out Of and In the Course Of

Substantial evidence, including well-founded medical opinion, supports the compensation judge's determination that the act of standing for an extended period of time at the drive-in window was a contributing cause of the employee's faint and fall, and that the employee's resulting injury arose out of his employment.

#### Evidence – Expert Medical Opinion

A medical opinion does not lack foundation because the doctor did not explain the mechanism of injury or the underlying reasons for his expert opinion, and the compensation judge reasonably relied upon the adequately founded opinion of the employee's treating physician.

#### Medical Treatment and Expense – Reasonable and Necessary

A referral to a medical specialist or for diagnostic testing to evaluate or rule out an alternative explanation or treatment for a work-related injury is compensable, whether or not the condition or diagnosis evaluated is, itself, work-related, and the compensation judge properly ordered payment of examination by a neurologist and an MRI scan to evaluate or rule out any alternative explanation for the employee's faint and fall.

Affirmed.

***Keane v. Lametti & Sons, Inc.*, 4/14/05**

**DOI: 4/8/04**

#### Credits and Offsets – Bad Faith Causation

Substantial evidence, including lay testimony, employment records and the employee's medical records provide substantial support for the finding that the employee did not sustain a work-related injury as alleged and that he received benefits in bad faith.

Affirmed.

## • Summaries of Decisions

***Tigges v. United Parcel Services, 4/19/04***

DOI: \_\_\_\_\_

### Causation

Substantial evidence, including expert opinion, supported the compensation judge's decision that the employee's carpal tunnel syndrome was not work-related.

Affirmed.

***Schoenborn v. Softpac Industries, Inc., 4/20/05***

DOI: 3/25/03

### Wages – Irregular

Where the employee's wage was clearly irregular prior to her work injury, and where there was evidence indicating that the employee was working only temporarily at a higher-paying job on the date of her injury, the compensation judge did not err in basing the employee's weekly wage on earnings during the 26-week pre-injury period.

Affirmed.

***Maricle v. Farmstead Foods, 4/21/05***

DOI: 9/25/89

### Vacation of Award – Substantial Change in Condition

The evidence offered in this case demonstrates a substantial change in the employee's medical condition sufficient to warrant vacation of the 1991 Award on Stipulation.

Petition to vacate granted.

***Priglmeier v. Stellar Concrete and Masonry, 4/25/05***

DOI: 11/5/02, 10/24/00

### Causation

Where, for two years following his 2000 work injury, the employee was subject to no work restrictions, missed no work time and sought no further medical treatment, and where the judge's decision was otherwise supported not only by a medical opinion but also by the testimony of the employee and other medical records in evidence, the compensation judge's conclusion, in reliance on the medical opinion, that the employee's 2000 work injury was not a substantial contributing factor in the employee's physical condition following his 2002 work injury was not clearly erroneous and unsupported by substantial evidence.

Medical Treatment and Expense  
Practice and Procedure – Admission of Evidence  
Practice and Procedure – Remand

Where the employee submitted into evidence the records from his chiropractic provider but where his exhibit summarizing the related outstanding expenses did not include the actual bills, where it was unclear whether this failure occurred because of some oversight by the employee or because of some misunderstanding at trial, and where the judge ostensibly based her denial of payment for the treatment expenses on the absence of the actual billings and did not address either the reasonableness and necessity of the treatment or the merits of the employer/insurer's defenses under the treatment parameters, the compensation judge's denial of payment for the treatment expenses was reversed, and the issue was remanded to the compensation judge for further consideration and findings.

Temporary Total Disability

Where the employee's QRC testified that the employee fully cooperated with rehabilitation efforts during the period in question, where, although he did not search for other work, the employee did attempt the full-time job offered by the employer and did request amendments to his rehabilitation plan to allow a second surgical opinion and exploration of alternative job goals, and where the proposed amendments to the rehabilitation plan were rejected by the employer/insurer, the compensation judge's award of temporary total disability benefits was not clearly erroneous and unsupported by substantial evidence.

Where, having been fully advised that rehabilitation services had been suspended, the employee evidently did not submit a single job application anywhere once he had stopped working for the employer, the compensation judge's denial of temporary total disability benefits was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the employee was without rehabilitation assistance during the period at issue.

Permanent Partial Disability

Where it was clear from the record that the judge's permanency rating was supported by the opinions of at least three doctors, the compensation judge's award of compensation for a 7 percent whole body impairment instead of for a 12 percent whole body impairment was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the judge did not specify in her opinion which doctor's opinion she was relying upon.

Maximum Medical Improvement

Where the employee's treating doctor had testified that the employee had not reached MMI, where that doctor had recommended a facet injection as a treatment less invasive than fusion or the installation of an artificial disc, where the employer/insurer had not authorized the facet injection until just before trial, where at least one other doctor had opined that the employee remained a surgical candidate, and where even the independent medical examiner had conceded that the facet injection "may obviate the need for surgical intervention," the compensation judge's conclusion that the employee was not yet at MMI was not clearly erroneous and unsupported by substantial

## • Summaries of Decisions

evidence, notwithstanding the fact that there remained some uncertainty as to whether or not the proposed facet injection might result in significant lasting improvement in the employee's condition.

Affirmed in part, reversed in part, and remanded

***Cantu v. Ameripride Linen and Apparel Service*, 4/27/05**

**DOI: 2/00/03**

### Attorney Fees – Fees on Appeal Minnesota Statutes §176.511, subd. 3

Where the employee's attorney's claim for fees before the compensation judge had related solely to services performed for the employee and not to hours expended at the hearing on fees or to time spent in preparing the fee petition, and where, on appeal from the judge's award of attorney fees, the employee's attorney had prevailed in obtaining an increase in his attorney fee award together with an accompanying increase in reimbursement to the employee under subdivision 7 of Minnesota Statutes §176.081, and the WCCA had accordingly awarded him an appellate fee pursuant to Minnesota Statutes §176.511, subd. 3, the WCCA refused, on review of its decision, to grant the employer and insurer's petition to reverse its award of the appellate fee.

Petition to reverse award denied after further review.

***Glasgow v. Franciscan Health Community*, 5/2/05**

**DOI: 1/28/04**

### Causation

Substantial evidence, including expert medical opinion, supported the compensation judge's decision finding no primary liability and/or medical causation for the employee's wrist condition.

Affirmed.

***Melartin v. Mavo Systems, Inc.*, 5/2/05**

**DOI: 10/21/96**

### Causation – Consequential Injury

Substantial evidence, including expert medical opinion, supports the compensation judge's determination that the employee's work-related carpal tunnel syndrome did not aggravate the employee's pre-existing alcoholism.

Affirmed.



***Vicari v. National Steel Pellet Company, 5/2/05***

DOI: \_\_\_\_\_

Medical Treatment and Expense  
Settlements – Interpretation

Where the parties' stipulation for settlement 20 years earlier had left open "all" reasonable and necessary future medical benefits, a specific provision of the stipulation that limited chiropractic care did not limit any other treatment modality, and the compensation judge's award of acupuncture therapy did not constitute an improper substitution of or other intrusion on the terms of the stipulation for settlement.

Medical Treatment and Expense – Treatment Parameters

Where the compensation judge, having observed the live testimony of the injured employee, was effusive in reiterating that "the employee's intense, debilitating pain ... was almost miraculously relieved by the acupuncture treatments," and where the recommendation of continued acupuncture therapy was clearly and affirmatively endorsed by the employee's treating doctor and neurosurgeon, the compensation judge's conclusion that the employee's case was the sort of "rare case" such as would qualify for departure from the treatment parameters under the Supreme Court's decision in Jacka v. Coca Cola Bottling Company was not clearly erroneous and unsupported by substantial evidence.

Medical Treatment and Expense – Reasonable and Necessary

Where, on review, the acupuncture therapy awarded by the compensation judge easily stood the test of the factors for assessment of chiropractic treatment that are articulated in Horst v. Perkins Restaurant, the compensation judge's conclusion that the acupuncture therapy was reasonable and necessary treatment for the employee's work injury was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the judge did not expressly reference the Horst decision or any other case law standard.

Affirmed.

***Stevens v. AAA Cooper Transportation, 5/3/05***

DOI: 4/15/03

Gillette Injury  
Evidence – Credibility

Where the judge had implicitly concluded that the employee's prior injuries played no significant role in the employee's current condition, and where there was evidence in the medical record to support the judge's conclusion, the compensation judge's own characterizations, in her memorandum, of the employee's credibility as "suspect" and of his failures to disclose his prior injuries as "misrepresentations" were not held to constitute findings on credibility adverse enough to the employee's claim to warrant reversal of the judge's award of benefits stemming from a Gillette-type injury.

### Causation – Gillette Injury

Where it was supported by expert medical opinion, the compensation judge's conclusion that the employee sustained a Gillette-type injury as a result of her work was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the supporting medical opinion may have been inconsistent with other medical opinion, including the opinions of two of the opiner's colleagues.

### Permanent Partial Disability – Temporary Injury

Where it was amply supported by the employee's testimony, the medical records and expert medical testimony and opinion, the compensation judge's determination that the employee's injury was a permanent aggravation of the employee's pre-existing condition, for which the employee was entitled to compensation for a 12 percent permanent partial disability of the whole body, was not clearly erroneous and unsupported by substantial evidence.

### Temporary Total Disability

Where, at the beginning of trial, counsel for the employer did not identify the absence of a job search as an issue for part of the benefits period claimed, where he expressly admitted that benefits were payable through that part of the period should primary liability be found, where primary liability was found, where the employer viewed the employee as being on a medical leave and advised him that his job was open for him until his leave expired, and where the employer was unable to accommodate the employee's restrictions during the period of that leave, the compensation judge's denial of benefits for that part of the benefits period at issue on grounds of a failed job search was clearly erroneous and unsupported by substantial evidence, although the judge's denial of benefits for the remainder of the period at issue was affirmed.

### Temporary Total Disability Job Search

Where the employee's QRC testified that the employee cooperated with rehabilitation services during the period at issue, the compensation judge's award of temporary total disability compensation was not clearly erroneous and unsupported by substantial evidence, notwithstanding the fact that the employee may not have fully met all of the QRC's expectations.

### Temporary Total Disability Temporary Partial Disability

Temporary total disability benefits cease 90 days after service of a medical report indicating that the employee has reached maximum medical improvement (MMI), and temporary partial disability benefit may be paid only to an employee who is working; where the employee reached 90 days post service of MMI on April 14, 2004, and was not thereafter working, the compensation judge's conclusion that the employee was not thereafter entitled either to temporary total disability benefits or to temporary partial disability benefits based on an imputed earning capacity was not clearly erroneous and unsupported by substantial evidence.

Attorney Fees – Edquist  
Practice and Procedure

Where the judge determined in a finding that the intervenor was entitled to reimbursement from workers' compensation benefits payable to the employee, the compensation judge's failure to award an Edquist attorney fee to the employee's attorney was apparently an oversight, and the judge's decision was modified to grant to the employee's attorney an Edquist fee of 20 percent of the benefits reimbursed to the intervenor.

Affirmed in part, reversed in part and modified in part.

***Helstrom v. St. Joseph's Medical Center*, 5/4/05**

**DOI: 5/2/02**

Causation

Substantial evidence, including expert medical testimony, supports the compensation judge's finding that the employee's work injuries caused a temporary aggravation of the employee's pre-existing neck condition and were not a substantial contributing cause of her ongoing neck condition, disability or need for treatment.

Medical Treatment and Expense

Where there is evidence in the record explaining what condition a medical device was used to treat, the compensation judge erred by denying the related medical expense for that device on the basis that the exhibit submitted did not indicate which condition it was used to treat. The denial is vacated and the matter remanded for reconsideration of the additional evidence.

Affirmed in part, vacated in part and remanded in part.

***Larson v. Mark J. Traut Wells, Inc.*, 5/4/05**

**DOI: 11/1/02**

Temporary Total Disability  
Evidence – Expert Medical Opinion

While expert medical opinion is relevant and may be determinative, it is not the only evidence a compensation judge may consider. On the facts of this case, the compensation judge properly considered and relied upon the employee's testimony regarding the severity of his pain and symptoms and the limitations the personal injury placed on his ability to work in finding the employee temporarily totally disabled in June and July 2003.

Evidence – Admissibility

Where the compensation judge found credible the employee's testimony regarding his work and earnings from August through October 2003, the admission of a handwritten note offered to corroborate the employee's testimony was not prejudicial and does not provide a basis for reversal of the compensation judge's award of temporary partial disability benefits.

### Temporary Partial Disability

Substantial evidence supports the compensation judge's determination that the employee was temporarily and partial disabled from Aug. 1 through Oct. 20, 2003, and his award of wage loss benefits for that period.

Affirmed.

***Levinski v. Jody Enterprises*, 5/9/05**

**DOI: 8/13/87**

### Practice and Procedure – Expedited Hearing

Where the hearing was set on an expedited basis under Minnesota Statute §176.106, subd. 7, the compensation judge did not err in refusing to expand the issues.

Affirmed.

***Darvell v. Wherley Motors*, 5/17/05**

**DOI: 6/5/80**

### Appeals – Law of the Case

Where this court determined in a previous unappealed decision that the doctrines of res judicata and collateral estoppel were not applicable to the facts in this case, that determination is the law of the case and will not be again considered on appeal.

### Medical Treatment and Expense – Treatment Parameters

Where neither party raised the applicability of the treatment parameters nor identified the specific rules relevant to the treatment at issue or how the parameters should be interpreted and applied to the facts of the case, this court will not consider the applicability of the treatment parameters for the first time on appeal.

### Causation

Substantial evidence, including the adequately founded opinions of Dr. McPartlin, Dr. Person and Dr. Kaiser, support the compensation judge's determination that the employee's treatment for reflex sympathetic dystrophy (RSD) between November 1998 and August 2001, was causally related to his work injury of June 5, 1980.

Affirmed.

## • Summaries of Decisions

***Kveton v. Lametti & Sons, 5/17/05***

**DOI: 9/19/02**

### Causation – Gillette Injury

Substantial evidence, including expert medical opinion, supports the arbitrator's finding that the employee did not sustain a Gillette injury as a substantial result of his work activities.

Affirmed.

***Potter v. Virginia Regional Medical Center, 5/19/05***

**DOI: 1/25/97**

### Causation – Temporary Aggravation

Substantial evidence, including an adequately founded expert medical opinion, supports the compensation judge's determination that the employee's Jan. 27, 1997, work-related injury was a temporary aggravation of a pre-existing low back condition.

Affirmed.

***Boss v. Tandem Products, Inc., 5/23/05***

**DOI: 3/22/02, 12/13/01**

### Rehabilitation – Eligibility Rehabilitation – Fees and Expenses

Because the compensation judge erred in concluding that the employee was not eligible for rehabilitation assistance and also erred in many of his other bases for denying the claim for rehabilitation expenses, remand was necessary for purposes of reconsideration and to allow the parties to submit additional evidence.

### Penalties

The record contained no basis for concluding that the rehabilitation firm committed fraud or any other conduct justifying imposition of sanctions pursuant to Minnesota Statutes §176.081, subd. 12.

Affirmed in part, reversed in part, and remanded.

## • Summaries of Decisions

***Hayes, parent and natural guardian of Hayes v. Peter L. Kormanik, 5/23/05***

**DOI: 10/5/02**

### Attorney Fees – Roraff

The compensation judge properly applied the Irwin factors to evaluate the employee's attorney fee claim. Fees in cases involving medical disputes are not limited by the 25/20 formula contained in Minnesota Statutes §176.081, subd. 1, if the statutory fee would not reasonably compensate the employee's attorney for time spent on medical issues.

Affirmed.

***Replogle, Jr., deceased by Hagen v. Franklen Eugene Zentz d/b/a Inter Tribal Business Network, 5/23/05***

**DOD: 12/18/02**

### Special Compensation Fund Practice and Procedure

Since the compensation judge's findings and order failed to comply with the requirements of Minnesota Statutes §176.183 regarding the uninsured employer's liability and the Special Compensation Fund's right to repayment, and as no party objected to the fund's request for modification, the findings and order are modified to comply with the statute.

Vacated in part and modified in part.

***Rodas v. By Bread Alone, Inc., 5/23/05***

**DOI: 5/29/96**

### Causation

Substantial evidence, including medical records, expert medical opinion and the employee's testimony, supported the compensation judge's findings that the employee's 1996 work injury was a substantial contributing cause of her left shoulder condition.

### Apportionment – Equitable Apportionment

Substantial evidence, including medical records, expert medical opinion and the employee's testimony, supported the compensation judge's equitable apportionment of wage loss benefits and medical and rehabilitation expenses. In that the case presents unusual features which could justify an equitable apportionment of permanent partial disability, that issue is remanded for reconsideration where it was not addressed in the compensation judge's findings or memorandum.

Apportionment – Statutory

Where medical records prior to the 1998 incident did not provide evidence sufficient to support a left shoulder disability which was ratable under the applicable disability schedules, the compensation judge did not err in denying statutory apportionment of permanent partial disability.

Affirmed in part and remanded in part.

***Pfingsten v. Jostens, Inc.*, 5/24/05**

**DOI: 3/31/03**

Causation – Gillette Injury  
Causation – Pre-existing Condition

Where there was ample evidence in the medical record that the employee's low back continued to trouble her subsequent to her lumbar fusion surgery in 1992, and where the judge's conclusion was supported by expert medical opinion, the compensation judge's conclusion that the employee did not prove that her pseudoarthrosis was due to a Gillette-type low back injury in 2003 was not clearly erroneous and unsupported by substantial evidence.

Causation – Aggravation  
Causation – Pre-existing Condition

Where there was ample evidence in the medical record that the employee's low back continued to trouble her subsequent to her lumbar fusion surgery in 1992 and increased in severity right up until the date of her alleged 2003 work injury, and where the judge's conclusion was supported by expert medical opinion, the compensation judge's conclusion that the employee did not prove that her pseudoarthrosis was due to a new specific injury in 2003 was not clearly erroneous and unsupported by substantial evidence.

Affirmed.

***Pomije v. Minnesota Valley Ag Coop, et al*, 5/24/05**

**DOI: 3/8/99, 4/23/95, 5/13/89**

Vacation – Mistake of Fact

There is no evidence of a mutual mistake of fact sufficient to require vacation of the award on stipulation on the facts presented in this case.

Vacation – Substantial Change in Condition

The petitioner has failed to establish a substantial change in the employee's medical condition since the time of the award on stipulation sufficient to support vacation of the Stipulation on Petition for Contribution and/or Reimbursement apportioning payment of rehabilitation costs paid on behalf of the employee between the employers and insurers.

Petition to vacate denied.

• Summaries of Decisions

**Adam v. Swift Transportation, 5/25/05**  
**DOI: 2/6/04**

Evidence – Credibility  
Discontinuance

Substantial evidence supports the compensation judge's determination finding the employee's testimony credible and that the employee did not misrepresent his employment status to his chiropractor, and the judge's denial of the employer and insurer's petition to discontinue benefits.

Affirmed.

**Sanchez v. Greg Wellick Construction, Inc., 5/26/05**  
**DOI: 12/31/03**

Costs and Disbursements  
Minnesota Statutes §176.511, subd. 2

Where the employee's attorney retained an interpreter to assist with communications with his client, and where no court proceedings were held during which the services of an interpreter were required, the compensation judge did not err in determining that the costs for the interpreter's services were not taxable under Minnesota Statutes §176.511, subd.2.

Affirmed.

**Bell v. Independent School District #625, 6/1/05**  
**DOI: 2/11/83**

Causation – Psychological Injury  
Causation – Substantial Evidence

Substantial evidence of record, including expert medical opinion, supports the compensation judge's finding that the employee's depression and related medical treatment are causally related to his work-related injury to his low back.

Affirmed.

**Newcombe v. Twin City Die Castings, 6/1/05**  
**DOI: 6/25/00**

Medical Treatment and Expense – Reasonable and Necessary

Substantial evidence supports the findings and order of reasonableness and necessity of certain prescriptions for treatment of the employee's carpal tunnel syndrome during the pertinent period.

Affirmed.



***Erickson v. Boart Longyear Company, 6/2/05***

**DOI: 6/24/03**

Causation – Substantial Contributing Cause

Given the discrepancies between the employee's testimony and his medical records, given the inconsistencies between the employee's account of the alleged work injury and his actions after the work injury, and given all of the other circumstances of this case, it was not unreasonable for the judge to conclude that the employee had not sustained either a specific injury or a Gillette injury as claimed, despite the fact that the employee's testimony was not directly contradicted by any other witness.

Affirmed.

***Deines v. Patrick Winkler d/b/a Custom Log Buildings, et al, 6/6/05\****

**DOI: 7/26/02**

Employment Relationship – General Contractor  
Insurance – Coverage

Where there was no evidence that the parties ever contemplated the possibility that the house that was being built would ever become the personal home of the owner of the insured entity or was ever intended as anything other than a business investment, an investment in which both the insured entity and the uninsured entity were collaborating, and where, as a collaborator in that investment, the insured entity had – and acted on – various contractor-type responsibilities, including the furnishing of the property on which the house was being built for resale, the compensation judge's conclusion that the insured entity was a general contractor liable for reimbursing the Special Compensation Fund for its payment of benefits in the stead of the uninsured entity/employer was not clearly erroneous and unsupported by substantial evidence.

Contribution and Reimbursement  
Jurisdiction – Subject Matter  
Practice and Procedure – Remand

Pursuant to Minnesota Statutes §176.371, "[a]ll questions of fact and law submitted to a compensation judge at the hearing shall be disposed of," and, where it was uncontested fact that among the issues to be addressed by the compensation judge was the insured general contractor's entitlement to reimbursement from the uninsured subcontractor/employer for the former's reimbursement to the Special Compensation Fund for benefits paid under a temporary order, the compensation judge did not have discretion to avoid deciding the issue, and the matter was remanded to the judge for appropriate findings and order based on the existing record.

Affirmed in part and remanded in part.

***Wittrock v. Dalco Roofing and Sheet Metal*, 6/6/05**

**DOI: 4/22/02**

#### Vacation of Award

Surveillance videotapes submitted by the employer and insurer indicate that, subsequent to a hearing and issuance of a Findings and Order on May 21, 2004, approving proposed surgery, the employee is now capable of certain physical activities and is now working. Nevertheless, the employee's surgeon, having obtained an MRI scan in November 2004 and examined the employee in December 2004, opines the employee's condition has worsened and continues to recommend surgery. We conclude the facts presented do not mandate a conclusion either that the employee has committed fraud or that the condition for which surgery was recommended has improved, and the employer and insurer has failed to establish good cause to vacate the findings and order.

Petition to vacate denied.

***Freeman-Fontaine v. Michaels Stores, Inc.*, 6/7/05**

**DOI: 8/23/02**

#### Permanent Total Disability – Permanent Partial Disability Threshold Minnesota Statutes §176.101, subd. 5.(2)

In determining whether an employee has met the statutory threshold of permanent partial disability necessary to qualify for permanent total disability, all of the ratable permanent impairment included in the total rating need not be related to the work injury and all permanent impairment need not be a factor affecting the employee's wage loss or ability to work.

#### Permanent Total Disability Job Search

A diligent job search is not a legal prerequisite to a finding of permanent total disability, and a job search is not required where medical and vocational evidence in the record sufficiently demonstrates that a job search would be futile, although an employee's job search may go to the evidentiary weight of her claim that she is totally disabled.

Affirmed.

***Wolner v. SPX Valves and Controls*, 6/16/05**

**DOI: 8/22/02**

#### Evidence – Expert Medical Opinion

The medical experts possessed sufficient information about the employee's job duties to establish foundation for an opinion as to whether the employee sustained a Gillette injury.

Vacated and remanded.

## • Summaries of Decisions

***Bollin Walsh v. Dassel Lakeside Community Home, 6/21/05***

**DOI: 10/6/03, 2/15/00**

### Causation – Gillette Injury

Substantial evidence, including well-founded medical expert opinion, supports the compensation judge's determination that the employee sustained a Gillette injury to the neck on Oct. 6, 2003.

### Causation Practice and Procedure

Where the compensation judge's findings regarding the Feb. 15, 2000, injury appear contradictory and inconsistent with medical expert opinion, the case is remanded for reconsideration of the issues of the nature and extent of the February 2000 injury, including any contribution and/or apportionment for which the insurer on that injury may be liable.

### Reimbursement Practice and Procedure

Where this court is unable to determine from the evidence submitted at the hearing the amount of benefits paid by Cambridge under a temporary order or the periods for which such benefits were paid, and where a pending claim for benefits by the employee and Cambridge's claim for contribution and/or reimbursement involve issues of apportionment not decided by the compensation judge, this court is unable to resolve the issues raised on appeal by the parties, and the case is remanded for additional findings.

Affirmed in part and remanded in part.

***Berry v. ECO Finishing Company, 6/23/05***

**DOI: 6/18/01**

### Rehabilitation – Retraining

The compensation judge properly considered the factors listed in Poole v. Farmstead Foods, 42 W.C.D. 970 (W.C.C.A. 1989), and substantial evidence supports the judge's award of retraining benefits.

Affirmed.

***McCue v. Balzer Manufacturing, 6/23/05***

**DOI: 8/20/02**

### Evidence – Expert Medical Opinion

Since it is not clear whether the compensation judge considered the references in Dr. Barnett's report to a 1991 motorcycle accident while determining the issue of causation, nor can the court determine from the compensation judge's findings and order whether he relied upon other medical opinions other than that of Dr. Barnett when reaching his conclusions on causation, and in view of

the potential error inherent in Dr. Barnett's reference to a 1991 motorcycle accident and the impact that may have had on the compensation judge's findings on causation, the court vacates those findings that relate to the compensation judge's determination that there is no causal relationship between the employee's 2002 work injury and his current condition and disability, and remand this matter to the compensation judge for reconsideration of the employee's claims.

Affirmed in part, vacated in part and remanded in part.

***Meyer v. George F. Cook Construction Company, et al*, 6/27/05\***

**DOI: 10/30/95**

Contribution and Reimbursement  
Causation – Gillette Injury

The compensation judge did not err in denying the employer and insurer's contribution claim where the expert opinions supporting the claim were based on faulty assumptions regarding the nature of the employee's work activities for the other employers.

Rehabilitation – Retraining

Where the retraining plan was never amended to reflect the course of study that the employee was actually pursuing, and where there was no labor market survey or other evidence sufficient to establish either availability of employment or potential earnings, the compensation judge erred in awarding retraining benefits related to the employee's attainment of a B.A. in political science, and the record did not support the employee's claim that the judge should have awarded retraining benefits also related to the employee's attainment of an M.A.

Affirmed in part and reversed in part.

***Bach v. Hutchinson Technology, Inc.*, 6/28/05**

**DOI: 2/18/98, 8/11/97**

Causation – Temporary Aggravation

Substantial evidence, including the adequately founded opinion of the employer and insurer's medical expert, supports the compensation judge's finding that the employee's work-related injuries of Aug. 11, 1997, and Feb. 18, 1998, were temporary injuries that resolved by July 1998, and the judge's denial of workers' compensation benefits.

Affirmed.

***Ellingson v. Brady Corporation*, 6/28/05\***

**DOI: 10/8/03**

Arising Out Of and In the Course Of – Recreational Activities

Where the employee was not required to attend the program and was free to remain at work, take a day of vacation or take a day off without pay, the employee's choice to attend the employer-

## • Summaries of Decisions

sponsored recreational program was voluntary, and the injury was not compensable pursuant to Minnesota Statutes §176.021, subd. 9.

Reversed.

***Maheer v. Chris Viger, et al*, 6/28/05**

**DOI: 12/5/02**

### Employment Relationship

Substantial evidence supports the compensation judge's determination that the employee was employed by the roofing contractor and that there was no joint employee or loaned employee relationship.

### Minnesota Statutes §176.215

The compensation judge erred in finding the house owner to be a general contractor where the owner did not obtain the building permit, did not exercise direct supervision and did not intend to sell the property.

### Minnesota Statutes §176.183, subd. 2

The Special Compensation Fund is entitled to an award of penalties against the uninsured employer for benefits paid by the fund.

Affirmed in part, reversed in part and vacated in part.

***Palmer v. ELO Engineering*, 6/28/05**

**DOI: 6/15/94**

### Causation

Where the employee's testimony and medical records indicate the employee continued to have symptoms related to his admitted mid-back injury, substantial evidence supports the compensation judge's finding that employee's 1994 injury to his thoracic spine was permanent and was a substantial contributing factor to the development of degenerative changes in the thoracic spine despite the lack of an expert medical opinion in the record expressly supporting this finding.

Affirmed.

***Sorcan, deceased by Sorcan v. USX Corporation f/k/a U.S. Steel Corporation*, 6/29/05**

**DOI: 11/00/74, DOD: 8/4/00**

### Causation

Substantial evidence, including well-founded medical expert opinion, supports the compensation judge's determination that neither the employee's rheumatoid arthritis nor the medications used to treat it were a substantial contributing cause of the employee's death.

### Occupational Disease – Disablement

Where the employee was found temporarily totally disabled in November 1974 during a period of hospitalization as a result of his silicosis, continued working while the employer investigated his claim, and was told by the employer in May or June 1975 that they did not have work for him, the date of "disablement" is November 1974, and not Oct. 8, 1975, when the employee eventually stopped working.

Affirmed in part and reversed in part.

***Anderson v. Borg and Company Decorating*, 6/30/05**

DOI: \_\_\_\_\_

### Permanent Partial Disability

Substantial evidence supports the determination of the compensation judge that the employee's work-related carpal tunnel syndrome was not a substantial contributing factor in the employee's symptoms which would entitle him to an award of permanent partial disability.

Affirmed.

***Keller v. Quicksilver Express Courier*, 6/30/05**

DOI: 3/25/03, 12/9/02

### Attorney Fees – Irwin

Under the circumstances of this case which involved a claim for both indemnity benefits and medical expenses, and in view of the compensation judge's application of the factors set forth in Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999), to the facts peculiar to this case, the compensation judge's award of attorney fees to the employee's attorney for his representation of the employee was not clearly erroneous and not an abuse of discretion on the facts of this case and must, therefore, be affirmed.

Affirmed.

***Vegel v. Kurt Manufacturing*, 6/30/05**

DOI: 7/10/03

### Causation

While the causation opinion of the employee's treating surgeon was weak, other evidence, including the employee's testimony and treatment notes from another treating physician, adequately supported the compensation judge's decision that the employee aggravated his pre-existing shoulder condition in a fall at work.

Affirmed.

***Weidler v. Johanning Trans-Fare, Inc.*, 6/30/05**

**DOI: 12/24/01**

Settlements – Practice and Procedure  
Minnesota Statutes §176.82

Where the employee has petitioned to vacate a stipulation for settlement for the sole purpose of eliminating the closeout of claims under Minnesota Statutes §176.82, and where the employee has made no additional claim for underlying workers' compensation benefits by proceeding with a petition to vacate, and because the enforceability of a closeout of claims under Minnesota Statutes §176.82 is to be determined by the district courts and not by the Workers' Compensation Court of Appeals, the petition to vacate is dismissed.

Petition to vacate dismissed.

# Minnesota Supreme Court

*April through June 2005*

Case summaries published are  
those prepared by the WCCA



- ***Kurt G. Kuehn v. St. Louis County, and St. Louis County/Self-Insured***, A04-2378, March 30, 2005

Decision of the Workers' Compensation Court of Appeals filed Nov. 16, 2004, affirmed without opinion.

- ***Jill R. Voshage v. State of Minnesota-MNSCU State University — Winona, and Self-Insured, and Community Memorial Hospital, Blue Cross/Blue Shield & Blue Plus, Hartford Life, and Gunderson, Ltd., Intervenor***, A04-2438, April 4, 2005

Decision of the Workers' Compensation Court of Appeals filed Nov. 24, 2004, affirmed without opinion.

- ***Nancy French v. Minneapolis Special School District #1/Self-Insured/Sedgwick Claims Management Service***, A05-131, April 6, 2005

Decision of the Workers' Compensation Court of Appeals filed Dec. 29, 2004, affirmed without opinion.

- ***Eleanor Szuba v. Wendy's International and ACE USA, and Nordin/Medicare Part B, Intervenor***, A05-197, April 20, 2005

Decision of the Workers' Compensation Court of Appeals filed Jan. 3, 2005, affirmed without opinion.

- ***Marti Viker v. Wal-Mart, and AIG/Claims Management, Inc., and Noran Neurological Clinic, Noridian Administrative Services, LLC/Medicare, Intervenor***, A05-313, April 20, 2005

Decision of the Workers' Compensation Court of Appeals filed Jan. 19, 2005, affirmed without opinion.

- ***Charles H. Schulenburg v. Corn Plus and Self-Insured/ASU Risk Management Services, and Fortis Benefits Insurance Company, Intervenor***, A05-453, May 25, 2005

Decision of the Workers' Compensation Court of Appeals filed Feb. 8, 2005, affirmed without opinion. We conclude that the treatment parameters provided in Minnesota Rules 5221.6020, subp.



## • Summaries of Decisions

2, do not apply to treatment provided while the employer is contesting liability, including all appeals. But our affirmance of the compensation judge's order that the employer pay for IDET procedures is limited to such procedures provided prior to the date of this order. Our order does not preclude the employer from objecting to IDET procedures provided after the date of this order.

• ***Gregory McLaughlin v. Child Care Resource and Referral, and Self-Insured/Administered by Berkley Risk Administrative Company, A05-237, May 26, 2005***

Decision of the Workers' Compensation Court of Appeals filed Jan. 7, 2005, affirmed without opinion.